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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 WILLIAM CONEY, ) No. 12-4405-SVW (AS)  
12 )  
13 Plaintiff, )  
14 v. ) ORDER DISMISSING THIRD AMENDED  
15 LEROY BACA, et al., ) COMPLAINT WITH LEAVE TO AMEND  
16 Defendants. )  
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17 INTRODUCTION

18  
19 On May 30, 2012, pro se Plaintiff William Coney, an inmate at  
20 the Los Angeles County Sheriff's Department Men's Central Jail  
21 ("MCJ"), filed a Complaint, pursuant to 42 U.S.C. § 1983 alleging  
22 failure to train, denial of accommodations for disabled inmates, and  
23 deliberate indifference claims against Los Angeles County Sheriff  
24 Leroy Baca, the Los Angeles County Board of Supervisors ("Board"),  
25 Dr. Zasorian (a medical doctor at the MCJ), the County of Los  
26 Angeles, and "Doe" Sheriff's Deputies 1-10 (Docket Entry No. 3). On  
27 July 3, 2012, pursuant to the congressionally-mandated screening of  
28 civil actions brought by prisoners seeking redress from governmental

1 entities or employees, see 28 U.S.C. § 1915A(a), the Court dismissed  
2 the Complaint with leave to amend due to various defects in pleading.  
3 (See Order Dismissing Compl., Docket Entry No. 5.)  
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5 On August 3, 2012, Plaintiff filed a First Amended Complaint  
6 ("FAC") (Docket Entry No. 6) naming the same Defendants and stating  
7 allegations that were substantially similar to those of the  
8 Complaint, along with a wide range of other purported conduct on the  
9 part of MCJ employees. On December 10, 2012, the Court dismissed the  
10 FAC with leave to amend for essentially the same reasons the Court  
11 dismissed the original Complaint. (See Order Dismissing FAC, Docket  
12 Entry No. 7.)  
13

14 On March 11, 2013, Plaintiff filed a Second Amended Complaint  
15 ("SAC") (Docket Entry No. 11) naming Sheriff Baca, the Board, Dr.  
16 Nickolay Teophelov (MCJ's Chief Medical Surgeon), and Sheriff's  
17 Deputies Tia Taylor and J. Moore as Defendants. In the SAC,  
18 Plaintiff alleged MCJ employees had assaulted him, planted contraband  
19 in his cell, denied him proper medical care, and engaged in a  
20 multitude of other forms of misconduct. On April 30, 2013, the Court  
21 again dismissed Plaintiff's then-operative pleading for essentially  
22 the same reasons the Court had dismissed the original Complaint.  
23 (See Order Dismissing SAC, Docket Entry No. 13.) The Court found  
24 that Plaintiff had failed to state a claim against Dr. Teophelov in  
25 his individual capacity because he had not made a showing of  
26 Teophelov's personal participation in any action that violated  
27 Plaintiff's constitutional rights. (Id. at 2-3.) The Court also  
28 found that Plaintiff similarly failed to state a claim against

1 Sheriff Baca in his individual capacity because he had failed to  
2 allege that Sheriff Baca had engaged in any conduct giving rise to  
3 Plaintiff's claimed constitutional violations. (Id. at 3-4.) The  
4 Court further found that Plaintiff had failed to state a claim  
5 against any Defendants in their official capacities because he had  
6 not established any link between any official custom or practice and  
7 the alleged wrongful conduct. (Id. at 4-6.) The Court granted  
8 Plaintiff leave to amend with respect to the remaining Defendants and  
9 cautioned Plaintiff to abide by Federal Rule of Civil Procedure 8 in  
10 submitting any Third Amended Complaint to cure the deficiencies in  
11 the SAC. (Id. at 7.)

12  
13 On June 5, 2013, Plaintiff filed a Third Amended Complaint  
14 ("TAC") (Docket Entry No. 14) naming the following Defendants:  
15 Sheriff Baca, Dr. Teophelov, Sheriff's Deputies Tia Taylor and James  
16 Moore,<sup>1</sup> "Doe" Sheriff's Deputies 1-20, and the Board. (TAC 3-4.)  
17 Baca, Teophelov, and the Board are named in their individual  
18 capacities, while the remaining Defendants are sued in both their  
19 individual and official capacities. (See id.) The Court has  
20 screened the TAC as prescribed by 28 U.S.C. § 1915A(b) and 42 U.S.C.  
21 § 1997e.

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25 <sup>1</sup> Although the SAC named Deputy "J. Moore" as a Defendant, (SAC  
26 4), the TAC omits Deputy "J. Moore" from the list of Defendants and  
27 instead sues Deputy "James Moore." (See TAC 3-4.) Nevertheless, the  
28 TAC alleges that Deputy "J. Moore" assaulted him in December of 2011.  
Given the liberal construction the Court must give to pro se  
complaints, see Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010),  
the Court proceeds on the assumption that Deputy "James Moore" and  
Deputy "J. Moore" are both the same individual.

**ALLEGATIONS OF THE THIRD AMENDED COMPLAINT**

The Court has thoroughly reviewed the TAC and, out of an abundance of caution, also reviewed Plaintiff's prior complaints (Docket Entry Nos. 3, 6, 11). The Court notes that although the TAC does not reiterate Plaintiff's allegations concerning the deputies' alleged interference with his ability to attend sentencing hearings, (see FAC 16-17; SAC 17, 20-21, 24-25), it restates many of the same allegations addressed in the SAC. (See, e.g., TAC 20-21, 23 (restating the purported November and December assaults).) As did the FAC and SAC, the TAC alleges a multitude of misconduct on the part of MCJ employees including but not limited to: unnamed deputies planted contraband in Plaintiff's cell as a pretext to initiate disciplinary proceedings against Plaintiff, (see id. at 13-14); MCJ employees assaulted Plaintiff, (see id. at 20-21, 23); an MCJ doctor denied Plaintiff purportedly necessary medical care, (see id. at 21); and another MCJ doctor moved Plaintiff out of a cellblock designed for disabled inmates in retaliation for filing grievances against MCJ officials. (See id. at 5, 10, 11.)

**DISCUSSION**

Congress mandates that district courts initially screen civil complaints filed by prisoners seeking redress from a governmental entity or employee. 28 U.S.C. § 1915A(b). This Court may dismiss such a complaint, or any portion thereof, before service of process, if the Court concludes that the complaint (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be

1 granted; or (3) seeks monetary relief from a defendant who is immune  
2 from such relief. 28 U.S.C. § 1915A(b)(1)-(2); see also Lopez v.  
3 Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

4  
5 To state a claim for which relief may be granted, a complaint  
6 must contain "enough facts to state a claim to relief that is  
7 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
8 570 (2007). "A claim has facial plausibility when the plaintiff  
9 pleads factual content that allows the court to draw the reasonable  
10 inference that the defendant is liable for the misconduct alleged."  
11 Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009). In addition, the court  
12 must interpret a pro se complaint liberally and construe all material  
13 allegations of fact in the light most favorable to the plaintiff.  
14 See Hebbe, 627 F.3d at 342 ("[A] complaint [filed by a pro se  
15 prisoner] 'must be held to less stringent standards than formal  
16 pleadings drafted by lawyers.'" (quoting Erickson v. Pardus, 551  
17 U.S. 89, 94 (2007) (per curiam)). However, the court does not have  
18 to accept as true mere legal conclusions. See Iqbal, 556 U.S. at 678  
19 ("Threadbare recitals of the elements of a cause of action, supported  
20 by mere conclusory statements, do not suffice."). Furthermore, in  
21 giving liberal interpretation to a pro se complaint, the court may  
22 not supply essential elements of a claim that were not initially  
23 pled. Pena v. Gardner, 976 F.2d 469, 471-72 (9th Cir. 1992).

1           A.     The Third Amended Complaint Fails To State A Claim For  
2                     Excessive Force Relating To The Purported November 28, 2011  
3                     Assault

4  
5           Plaintiff's excessive force claim is based on his allegation  
6 that while Senior Deputy Taylor and Custodial Assistant Garcia  
7 escorted him to an MCJ medical facility on November 28, 2011,  
8 Plaintiff "was shoved in the lower part of [his] back[,] and sent  
9 sprawling face-first down a moving escalator with [his] hands secured  
10 behind [his] back by handcuffs." (TAC 20-21.) Plaintiff alleges  
11 that his fall caused him to "bleed[ ] from numerous cuts and  
12 gashes."<sup>2</sup> (TAC 21.)

13  
14           Section 1983 permits recovery for excessive force causes of  
15 action asserted by pretrial detainees. See Graham v. Connor, 490  
16 U.S. 386, 395 n.10 (1989) (citing Bell v. Wolfish, 441 U.S. 520, 535-  
17 39 (1979)) ("It is clear . . . that the Due Process Clause protects a  
18 pretrial detainee from the use of excessive force that amounts to  
19 punishment."). Yet, Plaintiff's failure to identify the MCJ employee  
20 who shoved him is fatal to his potential claim.

21  
22           Although not binding in this Circuit, the Court finds the Second  
23 Circuit's decision in Arar v. Ashcroft persuasive. 585 F.3d 559 (2d  
24 Cir. 2009) (en banc). There, Arar filed a *Bivens* action against  
25 several federal officials. See id. at 567, 569. In one of the

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27           <sup>2</sup> Plaintiff attached as an Exhibit to his SAC a medical record  
28 that states that on November 28, 2011, MCJ medical personnel treated  
Plaintiff for abrasions on his knees and his right hand. (See SAC  
52.)

1 counts of Arar's complaint, he asserted "'Defendants'-  
2 undifferentiated" had denied him his due process right of access to  
3 the courts. Id. at 569. "[The plaintiff] allege[d] (in passive  
4 voice) that his requests to make phone calls 'were ignored,' and that  
5 'he was told' that he was not entitled to a lawyer, but he fail[ed]  
6 to link these denials to any defendant, named or unnamed." Id. The  
7 court concluded that this failure rendered the count defective such  
8 that it failed to state a claim for relief. See id.

9  
10 Plaintiff's potential excessive force claim is analogous to  
11 Arar's allegations. Here, Plaintiff also sues government officials  
12 for violating his civil rights. He too "fails to link [the assault]  
13 to any defendant, named or unnamed" and uses the passive voice to  
14 state his allegations. Therefore, if Plaintiff wishes to pursue a  
15 claim for excessive force, he should not only restate these  
16 allegations, but also identify the MCJ employee(s) who allegedly  
17 assaulted him as Defendant(s) in his Fourth Amended Complaint. If  
18 Plaintiff is unaware of the identities of such Defendant(s), he  
19 should state this fact in his Fourth Amended Complaint and name "Doe"  
20 Defendant(s).<sup>3</sup> See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th  
21 Cir. 1999) (use of "Doe" Defendants is permissible in certain  
22 circumstances).

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26 <sup>3</sup> However, before the Court can order service of process by the  
27 United States Marshal upon any fictitious defendant, Plaintiff must  
28 provide identifying information sufficient to permit the United  
States Marshal to effect service of process upon the defendant,  
including the defendant's name and address.

1           B.    Plaintiff's Claim Against Deputy J. Moore Passes Screening

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3           Plaintiff avers that he was again assaulted on December 19, 2011  
4 when, after Dr. Wilmore, an MCJ physician, had a verbal altercation  
5 with Plaintiff, Wilmore told deputies to "[g]et him[,] " thus  
6 directing the deputies to attack Plaintiff. (See TAC 23.) According  
7 to the TAC, Deputy J. Moore then put Plaintiff in a "sleeper hold."  
8 (TAC 23.) Dr. Wilmore told deputies to "[b]reak [Plaintiff's] leg."  
9 (Id.) Upon hearing these instructions, Deputy Moore placed his knee  
10 on Plaintiff's back while an unnamed deputy stomped on and injured  
11 Plaintiff's leg. (See id.)

12  
13           Here, Plaintiff does allege that Defendant Moore engaged in  
14 specific misconduct that harmed him (*i.e.*, Moore's alleged assault on  
15 Plaintiff). Therefore, that claim does pass the Court's  
16 congressionally-mandated screening. However, to the extent that  
17 Plaintiff wishes to recover against any other persons for the alleged  
18 December 2011 assault, Plaintiff has failed to state a claim for  
19 relief. Specifically, Plaintiff's claim for excessive force does not  
20 name Dr. Wilmore as a Defendant nor does it identify the deputy who  
21 purportedly stomped on his leg. If Plaintiff wishes to attribute  
22 this conduct to a "Doe" Defendant, he should explicitly state that in  
23 his Fourth Amended Complaint. Furthermore, Plaintiff should also  
24 attach to the Fourth Amended Complaint any documents that would  
25 substantiate such an excessive force claim (*e.g.*, medical records  
26 concerning the incident in question).<sup>4</sup>

27  
28           <sup>4</sup> Plaintiff is again warned that if he does file a Fourth Amended  
Complaint, he should restate his averments against Deputy J. Moore in



C. The Third Amended Complaint Fails To State Claims Against Defendants Baca, Neophelov, And The Board

Plaintiff's allegations against Defendants Baca, Neophelov, and the Board fail to state claims upon which relief can be granted for the same reasons that the SAC failed to state such claims against these Defendants. To that end, the Court incorporates by reference its prior Order dismissing the SAC, which fully articulated the reasons why the asserted claims against these Defendants fail. (See Order Dismissing SAC 2-6, Docket Entry No. 13.)

In the Order dismissing the SAC, the Court explained that "for a person acting under color of state law to be liable under section 1983[,], there must be a showing of *personal participation* in the alleged rights deprivation: there is no respondeat superior liability under section 1983." (Id. at 2 (quoting Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002)) (internal quotation marks omitted).) Furthermore, the Court warned Plaintiff that "[c]onclusory allegations that a defendant violated a civil right are not acceptable and will be dismissed." (Id. at 7.) Plaintiff was instructed that he needed to "affirmatively link the conduct of [each] defendant with the specific injury suffered by Plaintiff." (Id.)

The TAC fails to allege that Baca, Neophelov, and the Board engaged in any conduct that injured Plaintiff, beyond conclusory

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the new filing, otherwise that claim will have no legal effect. See Ferdik, 963 F.2d at 1262.

1 statements. For example, Plaintiff alleges that "Leroy [B]aca was  
2 made personally aware [that MCJ staff had threatened and assaulted  
3 Plaintiff] and other egregious violations, but since he had already  
4 condoned thru [sic] his actions a culture of abuse, he 'naturally'  
5 ignored these and other attempts to get him to act to prevent further  
6 such abuses by his employ[ees]." (TAC 11.) Plaintiff further avers  
7 that "[t]his was and is clearly and unequivocally 'conspiratorial  
8 dereliction of duty' thru [sic] a 'failure to act' by Sheriff Leroy  
9 [B]aca, his administrative staff . . . and other subordinate staff  
10 . . . in a conscious and deliberate effort to avoid the diligent  
11 performance of their duties." (Id.) As set forth in the Court's  
12 previous order, such allegations are insufficient to state claims for  
13 relief. (Order Dismissing SAC 4, Docket Entry No. 13); see also  
14 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp  
15 v. Twombly, 550 U.S. 544, 570 (2007)) ("[A] complaint must contain  
16 sufficient factual matter, accepted as true, to 'state a claim to  
17 relief that is plausible on its face.'").

18  
19 The Court has offered Plaintiff several opportunities to clarify  
20 and properly plead his claims against Baca, Neophelov, and the Board.  
21 Yet, the TAC, which is the fourth complaint filed by Plaintiff,  
22 continues to suffer from the same defects as Plaintiff's previous  
23 complaints. (See Order Dismissing Compl., Docket Entry No. 5; Order  
24 Dismissing FAC, Docket Entry No. 7; Order Dismissing SAC, Docket  
25 Entry No. 13.) Dismissal with prejudice of Plaintiff's defective  
26 claims is therefore proper and preserves those claims for appeal.  
27 See Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012) ("For  
28 claims dismissed with prejudice and without leave to amend, we will

1 not require that they be repled in a subsequent amended complaint to  
2 preserve them for appeal.").

3  
4 Therefore, because Plaintiff has failed to properly state a  
5 claim against Defendants Baca, Neophelov, and the Board and has been  
6 afforded several opportunities to properly plead these claims, it  
7 appears that any further amendment would be futile and these claims  
8 should be dismissed with prejudice. See Pagtalunan v. Galaza, 291  
9 F.3d 639, 642-43 (9th Cir. 2002) (court may dismiss action for  
10 failure to follow court order); Simon v. Value Behavioral Health,  
11 Inc., 208 F.3d 1073, 1084 (9th Cir. 2000) (affirming dismissal  
12 without leave to amend where plaintiff failed to correct deficiencies  
13 in complaint, where court had afforded plaintiff opportunities to do  
14 so, and where court had given plaintiff notice of the substantive  
15 problems with his claims), amended by 234 F.3d 428, overruled on  
16 other grounds by Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir.  
17 2007); Plumeau v. Sch. Dist. #40 Yamhill Cnty., 130 F.3d 432, 439  
18 (9th Cir. 1997) (denial of leave to amend appropriate where further  
19 amendment would be futile).

20  
21 D. The Third Amended Complaint Fails To State A Claim Against  
22 Defendants In Their "Official" Capacities

23  
24 In the Order dismissing the SAC, the Court explained that  
25 "official capacity suits filed against state officials are merely an  
26 alternative way of pleading an action against the entity of which the  
27 defendant is an officer." (Order Dismissing SAC 4, Docket Entry No.  
28 13 (citing Hafer v. Melo, 502 U.S. 21, 27 (1991)).) Furthermore, the

1 Court made clear that "[a] local government entity, . . . 'may not be  
2 sued under § 1983 for an injury inflicted solely by its employees or  
3 agents. Instead, it is when execution of a government's policy or  
4 custom . . . inflicts the injury that the government as an entity is  
5 responsible under § 1983.'" (Id. (alteration in original) (quoting  
6 Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 694 (1978).)  
7 Because the SAC had not identified any government policy or custom  
8 that inflicted Plaintiff's purported injuries, the Court dismissed  
9 the SAC's claims against Defendants in their official capacities.  
10 (Id.)  
11

12 The TAC also fails to allege that Plaintiff's purported injuries  
13 were the result of a policy or custom. Moreover, this is the fourth  
14 time that Plaintiff has failed to properly allege the existence of  
15 such a policy or custom. (See Order Dismissing Compl., Docket Entry  
16 No. 5; Order Dismissing FAC, Docket Entry No. 7; Order Dismissing  
17 SAC, Docket Entry No. 13.) Therefore, the official capacity claims  
18 against Sheriff's Deputies Taylor and Moore and the "Doe" Deputies  
19 should also be dismissed with prejudice.  
20

21 E. The Remaining Allegations In The Third Amended Complaint  
22 Fail To Comply With Federal Rule Of Civil Procedure 8  
23

24 Federal Rule of Civil Procedure 8(a)(2) requires that a  
25 complaint contain "'a short and plain statement of the claim showing  
26 that the pleader is entitled to relief,' in order to 'give the  
27 defendant fair notice of what the . . . claim is and the grounds upon  
28

1 which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555  
2 (2007).

3  
4 Here, "[t]he Court has warned Plaintiff on *multiple* occasions  
5 about the importance of abiding by the strictures of Rule 8." (Order  
6 Dismissing SAC 6, Docket Entry No. 13 (emphasis in original).)  
7 Nonetheless, the balance of the TAC's allegations, which concern a  
8 wide range of purported conduct on the part of MCJ employees, are  
9 conclusory, incoherent, or plainly without merit. For instance, the  
10 TAC alleges that the MCJ staff decision to move Plaintiff out of a  
11 cellblock designed for disabled inmates "[had] [t]he effect of . . .  
12 allow[ing] custody . . . freedom, or license[,] to engage in open  
13 retaliation against Plaintiff (WILLIAM CONEY) by using denial of  
14 medical treatment . . . and ADA accommodations . . . as a means of  
15 punishment." (TAC 10.) Thus, the remaining allegations do not  
16 comply with the standards set forth in Rule 8 and should also be  
17 dismissed with prejudice.

18  
19 **ORDER**  
20

21 Based on the course of this litigation, it appears that  
22 Plaintiff may be unwilling or unable to amend his pleading to state  
23 cognizable claims for relief against Defendants Sheriff Baca, Dr.  
24 Teophelov, and the Board and official capacity claims against Deputy  
25 Taylor, Deputy Moore, and the "Doe" Deputies. (See Docket Entry Nos.  
26 3, 6, 11, 14). Accordingly, these claims are dismissed with  
27 prejudice.  
28

1       The Court's review of the Third Amended Complaint reveals that  
2 Plaintiff may have two potential claims for relief against MCJ  
3 employees: (1) the purported November 28, 2011 assault; and (2) the  
4 purported December 19, 2011 assault. The Court will grant Plaintiff  
5 leave to amend so that, if Plaintiff still wishes to pursue this  
6 action, he is granted **thirty (30) days** from the date of this  
7 Memorandum and Order within which to file a Fourth Amended Complaint  
8 that adheres to this Court's Order. The Fourth Amended Complaint  
9 shall not contain any claim the Court has dismissed without leave to  
10 amend. The Fourth Amended Complaint shall be complete in itself and  
11 shall not refer in any manner to any prior Complaint. Failure to  
12 file a timely Fourth Amended Complaint which states a cognizable  
13 claim for relief may result in the dismissal of this action. See  
14 Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002) (court may  
15 dismiss action for failure to follow court order); Simon v. Value  
16 Behavioral Health, Inc., 208 F.3d 1073, 1084 (9th Cir. 2000)  
17 (affirming dismissal without leave to amend where plaintiff failed to  
18 correct deficiencies in complaint, where court had afforded plaintiff  
19 opportunities to do so, and where court had given plaintiff notice of  
20 the substantive problems with his claims), amended by 234 F.3d 428,  
21 overruled on other grounds by Odom v. Microsoft Corp., 486 F.3d 541  
22 (9th Cir. 2007); Plumeau v. Sch. Dist. #40 Yamhill Cnty., 130 F.3d  
23 432, 439 (9th Cir. 1997) (denial of leave to amend appropriate where  
24 further amendment would be futile).

1 Plaintiff's remaining allegations, with the exception of the  
2 aforementioned excessive force claim against Deputy J. Moore,<sup>5</sup> are  
3 unviable and are also dismissed with prejudice.  
4

5 IT IS SO ORDERED.  
6

7 Dated: October 9, 2013  
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9  
10 STEPHEN V. WILSON  
11 United States District Judge  
12

13 Presented by:  
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16 /s/  
17 ALKA SAGAR  
18 United States Magistrate Judge  
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<sup>5</sup> See supra note 4 & accompanying text.